

(19,664.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 199.

ANTONIO JOSE AMADEO, FOR THE USE OF AND
TOGETHER WITH THE PASTOR MARQUEZ COM-
PANY, IN LIQUIDATION, PLAINTIFFS IN ERROR,

vs.

THE NORTHERN ASSURANCE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF PORTO RICO.

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1 At a regular term of the district court of the United States for the district of Porto Rico began and held at the city of Ponce in said district on the second Monday in January, being also the 11th day of that month in the year of our Lord nineteen hundred and four, and of the Independence of the United States of America the one hundred and twenty eighth.

Present: The Hon. Wm. H. Holt, judge.

Among the proceedings had were the following, to wit:

ANTONIO JOSÉ AMADEO	} No. 141. Trespass on the Case on Promises.
vs.	
THE NORTHERN ASSURANCE COMPANY.	

Be it remembered that heretofore, to-wit: On the 21st day of April A. D. 1903, came the plaintiff by his attorney in this cause and filed in the clerk's office of the court aforesaid a declaration herein, which said declaration is as follows, to wit:

Declaration.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO	}
against	
THE NORTHERN ASSURANCE COMPANY.	

Antonio José Amadeo, a citizen and resident of Porto Rico plaintiff by Charles M. Boerman his attorney, complains of the Northern Assurance Company a corporation organized by and under the laws and sovereignty of the United Kingdom of Great Britain and Ireland, defendant, of a plea of trespass on the case on promises:

For that whereas the defendant on or about the twenty first day December in the year 1884, made its policy of insurance and delivered the same to the plaintiff and thereby in consideration of a certain money premium, which has been paid by plaintiff to the defendant, did insured the plaintiff against loss and damage by fire to the amount of twelve hundred dollars pesos on a certain rancho under numero one, one thousand pesos, on another rancho numero

2 two, and nine hundred pesos on a cooperage building a total of three thousand and one hundred pesos. And that the defendant for the consideration aforesaid did by the said policy promise and agree to make good and satisfy unto the plaintiff his executors, administrators and assigns all such loss or damage not exceeding the said sum of three thousand one hundred pesos, as should happen by fire to the said property, whereon the said insurance was so

made as aforesaid from on or about the said twenty first day of December in the year 1884 until on or about the twenty first day of December of the year 1885 at noon, such loss or damage to be estimated according to true and actual value of said property at the time such loss or damage should happen and the amount thereof to be paid after notice and proof of such loss or damage should be made by the plaintiff in conformity with the conditions annexed to the said policy which are substantially as follows:

First. That all the circumstances of the risk to wit, situation and construction of buildings insured or in which effects are insured, the manner of their occupation if for residence or otherwise, the nature of the effects contained, and all calorific apparatus, must be specified, excepting chimneys and stoves and kitchen fires. In case of omission or concealment or incorrectness misleading the company appreciation and valuation of the risk the insurance will be null.

Second. In case of augmentation of the risk after the insurance by col-ocation of calorific or lighting apparatus or by introduction of dangerous operations business, effects or communications, or if another building dangerous be erected near or in case of insurance in other companies without consent of this company the insurance will remain without effect. In every case of the rise of the risk the company reserves the right to annul the policy returning the premium proportionate.

Third. For each separate building the quantity must be separately stated and also for the effects contained otherwise they will be not insured. Goods and house furniture must be separately insured.

3 Fourth. No insurance will be in effect till the premium or a deposit on account thereof is paid. Only receipts executed by this administration and signed by Gerent, secretary or other authorized employee will be recognized.

Fifth. The premium for renovation must be paid the same day and the policy will end at four in the afternoon.

Sixth. In the insurance are not included the following: Goods in deposit or commissioned, porcelain, crystals looking glasses, jewelry, watches, relics, metals, curious, manuscripts, engravings, pictures, designs scul-tures, musical, mathematical and philosophical instruments (if not especially mentioned) precious stones metals and moulds, writings and documents, bonds, notes, bills, money, bank-bills, stamps, account-books, powder and explosives, any damage arising through the natural heat or fermentation, or from invasion, foreign enemy, popular commotion or tumult from explosion except explosion from gas, from volcanic eruptions, earthquakes, hurricanes forest fires, or losses in buildings containing deposits of petroleum or coal-oil, canfin, benzin- naphtha or like liquids is not especially mentioned. Five gallons of coal-oil are allowed.

Seventh. The company is not responsible for more than forty dollars for each picture, engraving, design, jew-lry article, article of art, medal manuscript or other object, unless specified differently.

Eighth. A transfer of this policy without consent of the company indorsed thereon, if not by will or the effect of law, will avoid the policy.

Ninth. Right after a loss the insured must notify the company and after that, as soon as the circumstances will permit, must present a detailed (as reasonably as may be done) a statement of the different things lost or damaged with value at time of fire, presenting as comprobante (and if asked under oath) account books and other documents, explanation and proofs as reasonably may be asked. If the company should request, also proof that the loss did not originate from causes mentioned in art. six of these conditions.

4 And until all this be presented the company cannot be required to pay the loss. And if the property insured was partly damaged the insured cannot abandon it without consent of the company.

Ten. The value cannot exceed the cost of re-establishing, and in case of diminution of value by use or otherwise a deduction correspondingly shall be made.

Eleven. In case of allegations of fraud or false statements or willful causing of fire by insured or if no claim is made within three months or if after the claim has been refused no judicial proceeding is instituted three months thereafter, the insured in each of these cases loses the right of indemnization.

Twelve. In case of necessary removal of goods to save them from fire the company will contribute proportionately, but the company will not be responsible for losses thereby unless authorized by agent of company.

Thirteen. The company may reconstruct the building, but in case prevented by ordinances in force will not respond for more than the amount necessary for reparation in case no ordinance existed.

Fourteen. In case of loss the company may occupy the property damaged without any liability therefor.

Fifteen. In case of other insurance authorized by the company existing this company will only be liable proportionately.

Sixteen. In all cases where the policy is void all the premium paid will be forfeited.

Seventeenth. In case of disagreement as to the loss without the allegation of fraud the difference shall be submitted to arbitrators who may name a third one and their decision in writing shall be then obligatory. But in no case will the company take the risk of selling the property damaged. Experts may value to their worth before and after the fire and the company will pay the difference or the reparations.

Eighteen. If the property is worth more than the value insured then the insured loses pro rata. If the property is partly insured in another company then this — will be responsible only for the difference. If there be other insurance on a pro rata policy covering more property than the insured and there

was no other property but the insured herein lost, then this company responds for concurrently with the other.

Nineteen. The agents of this company shall not be responsible neither judicially nor extrajudicially by their persons or property of any claim made against the company. They will be responsible only as agents of the company, in whose name they sign the policy."

And the plaintiff avers that at the time of the making of the said policy and from thence until the happening of the loss and damage hereinafter mentioned he had an interest in the said property to the amount of the said sum so by the defendant insured thereon as aforesaid. And the plaintiff further avers that on the 7th day of February, 1885, the said property was consumed and destroyed by fire whereby the plaintiff then and there sustained loss and damage on the said property to the amount of the sum last aforesaid, which said loss and damage did not happen by means of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law, earthquake, hurricane, cyclone, spontaneous fermentation or heating, volcanic eruption, application of process by fireheat or explosion.

And the plaintiff further avers that forthwith after the happening of the said loss and damage he gave notice thereof to the defendant and as soon thereafter as possible delivered to the defendant as particular an account of the said loss and damage as the nature of the case would admit. And the plaintiff further avers that there was not at or since the time of making of said policy any other insurance on the said property except as mentioned in said policy and that the said building was not at or since that time appropriated, applied or used to and for the purpose of carrying on or exercising therein any trade business or vocation denominated hazardous or extra-hazardous or included in special rates.

Nevertheless although the plaintiff has kept and performed all things in said policy mentioned on his part to be performed and kept, the defendant has not yet paid to the plaintiff the said
 6 amount of the loss and damage aforesaid or any part thereof but refuses so to do to the damage of the plaintiff of ten thousand dollars and therefore he brings his suit.

C. M. BOAERMAN,
 Plaintiff's Attorney.

U. S. OF AMERICA, }
 District of Porto Rico, } ss :

José Antonio Amadeo being under oath says that the foregoing declaration is true to his knowledge in substance and fact.—

ANTONIO JOSÉ AMADEO.

Sworn and subscribed before me this 6th day of April, 1903.

A. AGUAYO, D. C.

The same day in the year last aforesaid the plaintiff by his attorney filed in the clerk's office of the court aforesaid a præcipe for a writ of summons in this case, which said præcipe is as follows, to-wit:

Præcipe for Summons.

United States District Court, District of Porto Rico.

ANTONIO JOSÉ AMADEO

vs.

NORTHERN ASSURANCE COMPANY. }

To the clerk of said court:

Please issue summons in above entitled case returnable to May term,

C. M. BOERMAN,
Plaintiff's Attorney.

Thereupon there was issued out of the clerk's office of said court our certain writ of summons directed to the marshal of this district and against the defendant in this cause, which said summons is as follows, to wit:

In the District Court of the United States for Porto Rico, Sitting at San Juan.

ANTONIO JOSÉ AMADEO

vs.

THE NORTHERN ASSURANCE COMPANY. }

C. L. No. 141.

Summons.

UNITED STATES OF AMERICA, } ss:
District of Porto Rico,

7 The President of the United States of America to the marshal of the district of Porto Rico, Greeting:

You are hereby commanded to summon the Northern Assurance Company if it can be found in your district to be and appear before the United States district court for the district of Porto Rico at the court rooms of said court in the city of Ponce on the 11th day of May, 1903, then and there to answer unto José Amadeo on an action on assumpsit, damages \$10,000 and have you then and there this writ. Failing to so appear judgment may be entered against the said defendant by default.

Witness: the honorable Wm. H. Holt, judge of the district court of the United States for Porto Rico, this 21st day of April, A. D. 1903 and of the Independence of the United States of America the 127.

Attest:

RICARDO NADAL, Clerk,
By A. AGUAYO, Deputy.

Joinder on Demurrer.

United States District Court for Porto Rico.

J. A. AMADEO
vs.
NORTHERN ASSURANCE CO. }

And the plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above set forth are sufficient in law for him to maintain his aforesaid action and he is ready to verify the same as the court shall direct: wherefore inasmuch as the defendant has not denied the said declaration the plaintiff prays judgment and his damages etc. to be adjudged to him etc.

C. M. BOERMAN,
Plaintiff's Attorney.

Thereupon an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit,

ANTONIO JOSÉ AMADEO
vs.
THE NORTHERN ASSURANCE CO. } C. L. No. 141.

9 Now comes the defendant herein and files a demurrer to the declaration and the same being heard is overruled and defendant thereupon files a plea.

And the plea filed by the defendant in this cause is as follows, to wit,

In the United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO
vs.
NORTHERN ASSURANCE COMPANY. } Common Law. No. 141.

Now comes the defendant above named, by its attorneys Dexter & Hord, and for its various plea to the declaration herein filed, says:

First. Defendant never promised and is not indebted to plaintiff in manner and form as in said declaration alleged, and of this it puts itself upon the country.

Second. For a second and further plea to the said declaration, defendant says that plaintiff ought not to have and recover herein for the reason that the alleged cause of action did not accrue within fifteen years before this suit, and of this it puts itself upon the country.

Third. For a third and further plea to the said declaration defendant says that plaintiff ought not to have and recover herein for the reason that plaintiff has no interest in the proceeds of the policy sued on, nor did he have at the time of the institution of this suit, the said policy and the proceeds thereof having been transferred, sold and assigned by him by notarial document May 2, 1885, to the firm of Pastor Marquez and Company, who are the only persons entitled to sue herein, and this defendants are ready to verify.

Fourth. For a fourth and further plea to said declaration defendant says that plaintiff ought not to recover herein for the reason that there has been no such damage or loss as set forth in the said declaration, and this defendant is ready to verify.

Fifth. For a fifth and further plea herein defendant says that plaintiff ought not to recover herein for the reason that after the said fire there was not presented to defendant as soon as circumstances would permit or within a reasonable time after said fire, a statement as specific as this defendant immediately demanded at the time of all the different objects, property and goods damaged or destroyed by the said fire, specifying the cash value of each article at the time of the fire, nor has there been presented to defendant, although demanded by it, of the holder at the time of said policy sued on, vouchers and proofs under oath as demanded by defendant; nor were there presented to defendant the books of account of plaintiff, nor various other documents, bill-, vouchers proofs, and explanations which defendant at that time demanded of plaintiff to show the amount of the loss thereof, or that the same was covered by the conditions of the said policy; and of this it puts itself upon the country.

Sixth. For a sixth and further plea to the declaration herein defendant says that plaintiff ought not to recover for the reason that immediately after the fire plaintiff made a claim in general terms for the full value of the said policy but without specifying the articles or giving in detail the information and proofs demanded of plaintiff by defendant as set forth in the fifth plea next above pleaded; but said claim was made for the full amount of said policy and was fraudulent in this, to wit: That the value of said property insured by the policy described in the declaration herein at the time of said insurance was not the sum specified in said policy, but that said value was much less than the amount contained in said policy, and that this insurance, sued on herein, was obtained by the false and fraudulent representations of plaintiff and without the knowledge of the defendant as to the real value of the said property so insured. And further the said claim for the total amount of the said policy so made as aforesaid was false and fraudulent for the reason that at the time of the said fire the property so described in said policy sued on herein was greatly less — the said sum so claimed as aforesaid by plaintiff; and this defendant is ready to verify.

Seventh. For seventh and further plea defendant says that plain-

11 tiff ought not to have and recover herein for the reason that the said fire as described in the declaration herein, and the destruction and loss of the property covered by the policy sued on herein was caused and occasioned by the procurement, means designs and voluntary act of the plaintiff, who caused the said property to be set fire for the fraudulent purpose of recovering from this defendant the amount of the said policy; and this defendant is ready to verify.

Eighth. For eighth and further plea to said declaration, defendant says the plaintiff ought not to recover herein for the reason that no sufficient and proper proofs of loss as required by the conditions of said policy of insurance, and as set forth in plea fifth herein above pleaded, was made or presented to defendant within three months after the said fire; and of this defendant puts itself upon the country.

Ninth. For ninth and further plea to the declaration herein defendant says that no suit was instituted to recover upon the said policy of insurance within three months after the said fire; and of this defendant puts itself upon the country.

Tenth. For tenth and further plea defendant says that plaintiff ought not to recover herein for the reason that on the — day of April 1885 defendant rejected the claims of plaintiff so made as aforesaid, and no suit was brought or judicial claim made against defendant within the term of three months from such rejection of said claim; and of this defendant puts itself upon the country.

DEXTER & HORD,
Attorneys for Defendant.

Miguel Hernandez being duly sworn upon his oath says that he is agent of the above named defendant Northern Assurance Company, that he has read the foregoing plea, and that the same is true according to the best of his knowledge and belief.

M. HERNA-DEZ,
For RAMON CORTADA & CO., Agents.

Sworn and subscribed before me this May 11th, 1903.

A. AGUAYO,
D. C. U. S. Court.

And afterwards, to wit; on the 12th day of May in the year last aforesaid came the plaintiff by his attorney and filed in the clerk's office of said court a replication in this cause, which said replication is as follows, to wit;

12

Replication.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO
 against
 THE NORTHERN ASSURANCE COMPANY. }

And the plaintiff says that as to the first plea of the defendant whereof he puts himself upon the country the plaintiff does the same.

2. As to the second and third pleas of the defendant above pleaded the plaintiff says that the same and the matters therein pleaded in manner and form are not sufficient in law to bar him from having his aforesaid action and that he is not bound by law to answer the same and this he is ready to verify.

3. As to the fourth plea the plaintiff avers that the loss and damage are, as stated in the declaration, and of this he puts himself upon the country.

4. As to the fifth plea the plaintiff says that all the notices proofs and other matters required by the conditions of the policy to be delivered within fifteen days were so delivered and this plaintiff prays may be inquired by the country.

5. As to the sixth plea plaintiff avers that the policy and the claim thereunder are and were made in good faith and conscience and denies that any fraud was intended or committed and this he prays may be inquired by the country.

6. As to the seventh plea plaintiff denies that the fire was of incendiary origin or that it was caused by his connivance or negligence, and this he prays may be inquired by the country.

7. And to the 8th plea plaintiff says that he did present every proof required by the condition of the policy within three months after the fire, and prays that this may be inquired by the country.

8. As to the ninth plea the plaintiff says that he could not commence suit within three months after the fire because the
 13 then agent of the company has informed plaintiff that he no more represents the defendant and because the defendant was a foreign corporation and at the time at the end of three months had no representative agent in the island of Porto Rico. And the plaintiff also says that the defendant waived this clause of the policy, as the defendant offered him to pay a certain amount on the policy after the three months were over and all of this plaintiff prays may be inquired by the country.

9. And as to the tenth plea plaintiff says that he could not commence suit within three months after the rejection of the claim because the agent of the defendant informed him that the company had no more representative in the island of Porto Rico and because the company defendant is a foreign corporation and to the plaintiff's

knowledge and information did not have any representative at that time in the island of Porto Rico, and the plaintiff also says that the defendant for a long time has been dealing and in course of settlement with plaintiff and it has waived all the conditions alleged in that last said plea and of this plaintiff prays it may be inquired by the country.

C. M. BOERMAN,
Plaintiff's Attorney.

U. S. OF AMERICA, }
District of Porto Rico, } ss :

J. A. Amadeo on oath says that the foregoing replications are true in fact and substance.

ANTONIO J. AMADEO.

Sworn to before me this 12th May 1903—

RICARDO NADAL, Clerk,
By A. AGUAYO, D. C.

And afterwards, to wit, on the thirteen days of May in the year last aforesaid came the defendant and filed in the clerk's office of the court aforesaid a motion to strike from the files certain parts of replications in this cause, which said motion is as follows to wit:

United States District Court for Porto Rico, Sitting at Ponce.

ANTONIO JOSÉ AMADEO }
vs. } C. L. No. 141.
NORTHERN ASSURANCE CO. }

14 Now comes defendant above named, by its attorneys Dexter & Hord, and moves the court to strike from the replication of the plaintiff herein the following paragraphs or parts of his replication filed herein to wit:

That paragraph which purports to be a replication to the fourth plea of the defendant—for the reason that it is argumentative, trivial and not good pleading.

Also that paragraph or part of said replication which purports to be a replication to the fifth plea of defendant—for the reason that the same is argumentative, trivial and not good pleading.

And as to the paragraphs or said replication which purport to be a replication to the sixth, seventh, eighth, ninth and tenth pleas of defendant—for the reason that the same are argumentative, trivial and not good pleading.

DEXTER & HORD,
Attorneys for Defendants.

Thereupon an entry was made upon the journal of said court in said cause which said entry is as follows, to wit:

ANTONIO JOSE AMADEO, ETC., VS.

JOSÉ ANTONIO AMADEO
VS.
NORTHERN ASSURANCE COMPANY. } 141.

Now comes the defendant herein by its attorneys Dexter & Hord and files a motion to strike — parts of plaintiff's replication and the same being heard is submitted.

And afterwards to wit: on the 18th day of May in the year aforesaid, 1903 came the plaintiff by his attorney and filed in the clerk's office of the court aforesaid an amendment to the declaration in this cause, which said amendment is as follows to wit:

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO
against
THE NORTHERN ASSURANCE COMPANY. }

The plaintiff by leave of court amends his complaint declaration as follows:

In the title of the case after the name of the plaintiff add
15 the following words: "for the use of and together with Pastor Marquez Company in liquidation.

In the body of the declaration add at the end of it the following paragraph:

And plaintiff avers that about the month of August 1885 the said policy was assigned to the Pastor Marquez Company which is a company in liquidation and of which Pedreo Salazar is liquidator."

C. M. BOERMAN,
Plaintiff's Attorney.

J. A. Amadeo on oath says that the foregoing amendment to the declaration is true.

ANTO. J. AMADEO.

Sworn to this 18th day May, 1903.

A. AGUAYO, D. C.

And on the 21st day of May in the year last aforesaid an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit:

ANTONIO J. AMADEO
VS.
NORTHERN ASSURANCE COMPANY. }

Now comes the defendant herein by its attorneys Dexter & Hord and with permission of the court first had withdraws its motion to strike part of replication and by consent said replication is traversed upon the record.

And on the 22 day of May, 1903 came the parties herein by their respective attorneys and filed in the clerk's office of the court aforesaid a stipulation in this cause which said stipulation is as follows, to-wit:

ANTONIO J. AMADEO
vs.
NORTHERN ASSURANCE Co., } 141, 142, 143.
ROYAL INSURANCE Co.,
ROYAL INSURANCE Co. }

16 FREDERICO AMADEO
vs.
ROYAL INSURANCE Co., } 144, 145.
ROYAL INSURANCE Co. }

It is hereby stipulated and agreed that in common law cases numbered 141, 142, 143, 144, 145, there shall be read in evidence the depositions of the witnesses taken in common law cases Nos. 112 and 113, in London and Liverpool, England, as they now appear of record in the said causes, reserving to the parties the right to make such objections thereto as they might have made at the time of the trial of the said causes Nos. 112 and 113.

Witness our hands this 22nd day of May, 1903.

C. M. BOERMAN,
Attorney for Plaintiff.
DEXTER AND HORD,
Attorneys for Defendants.

This stipulation shall be considered as filed in each one of the said cases.

And afterwards, to wit: on the 12th day of January A. D. 1904 an entry was made upon the journal of said court in said case, which said entry is as follows, to wit:

ANTONIO J. AMADEO ETG ALL. }
vs. } No. 141.
NORTHERN ASSURANCE Co. }

The demurrer to the second plea herein is overruled to which plaintiff- excepts whereupon plaintiff- files a replication to the second plea to which the defendant files a demurrer.

And said replication to the 2nd plea filed by the plaintiff- in this cause is as follows, to wit;

United States District Court for Porto Rico.

J. A. AMADEO ET AL. }
 VS.
 NORTHERN ASSURANCE Co. }

And as to the second plea of the defendant above pleaded the plaintiffs say that the same limitation and prescription therein pleaded was inter-upted extrajudicially and this plaintiffs pray may be inquired by the country.

Wherefore the plaintiffs pray judgment and their costs etc.

C. M. BOERMAN,
 Attorney for Plaintiffs.

17 Ermelindo Salazar under oath says that the foregoing plea is replication is true in substance and fact.

E. SALAZAR.

Sworn to before me this 12th day of January 1904.

A. AGUAYO.

And the said demurrer to said replication to 2nd plea filed by the defendant in this cause is as follows, to wit :

United States District Court for Porto Rico, Sitting at Ponce.

JOSÉ ANTONIO AMADEO ET AL. }
 V.
 NORTHERN ASSURANCE COMPANY. } No. 141.

Now comes defendant by its attorneys F. H. Dexter and Henry F. Hord and demurring to the replication to the second plea herein filed say- that the same is insufficient in law.

Wherefore etc.

NORTHERN ASSURANCE COMPANY,
 By F. H. DEXTER &
 HENRY F. HORD, Its Attorneys.

And afterwards to wit ; on the 13th day of January, 1904 an entry was made upon the journal of said court in said cause, which said entry is as follows, to wit :

ANTONIO JOSÉ AMADEO ET AL. }
 VS.
 NORTHERN ASSURANCE COMPANY. } No. 141.

The plaintiff- having filed on Jan. 12th 1904, an additional replication relative to the second plea of the defendant herein and the

defendants having heretofore filed a demurrer thereto it is now upon hearing sustained, plaintiff- excepts, and the plaintiff- declining to plead further it is adjudged that the defence set up in the second paragraph of the plea be and it is hereby sustained.

And it is therefore adjudged by the court that issue is found in favor of the defendant and that the plaintiffs recover nothing herein and that defendants go hence with judgement for cost against the plaintiffs; to all of which plaintiffs except.

Time is given to plaintiff- to March 15th to present a bill of exceptions and thereupon upon motion the amount of the appeal bond herein is fixed at five hundred dollars (\$500).

18 On the 14th day of March 1904, the plaintiffs filed their bill of exceptions which is as follows:

United States District Court for Porto Rico.

JOSÉ ANTONIO AMADEO ET AL.
against
THE NORTHERN ASSURANCE COMPANY. } C. L. No. 141.

Bill of Exceptions.

Be it remembered that at a term of the district court for Porto Rico, held in the city of Ponce, on the 12th day of January 1904, a cause therein pending wherein José Amadeo and The Pastor Marquez Company were plaintiffs and The Northern Assurance Company was defendant, came on to be heard before the Hon. Wm. H. Holt, judge of said court upon the demurrer of the plaintiffs to the second plea of the defendant to the declaration, and thereupon the court overruled the said demurrer, to which ruling of the court the plaintiff- excepted.

Thereupon the plaintiffs having filed a replication to said second plea of the defendant, the defendant demurred to said replication, and the court thereupon after hearing the argument of counsel sustained said demurrer, to which ruling the plaintiff- excepted.

This bill may not be necessary to the appeal,—in fact the court sustains but counsel desiring, it is approved and signed this March 14, 1904.

WM. H. HOLT, Judge.

And on the 20th of September 1904, the plaintiff- filed a petition for a writ of error and assignment of errors in this cause as follows, to wit:

Petition for Writ of Error.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO ET AL. }
 VS. }
 NORTHERN ASSURANCE COMPANY. }

19 The plaintiff- in the above entitled cause feeling themselves aggrieved by the judgement entered on the 13th day of January 1904 come now by Charles M. Boerman their attorney and petition said court for an order allowing said plaintiffs to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided.

And your petitioners will forever pray.

C. M. BOERMAN,
 Attorney for Plaintiffs.

Assignment of Errors.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO ET AL. }
 VS. }
 NORTHERN ASSURANCE COMPANY. }

Come now the plaintiffs and file the following assignment of errors upon which they will rely — their prosecution of the writ of error in the above entitled cause.

1. The overruling by the court of the demurrer of the plaintiffs to the second plea of defendant to the declaration.

2. Sustaining the demurrer of the defendants to the replication of the plaintiff- to the said second plea.

3. That the court erred in rendering judgement for the defendant and against the plaintiffs upon the pleadings in said cause and that said judgement is contrary to the law and the facts as stated in the pleadings in said cause.

Wherefore said plaintiffs and plaintiffs in error pray that the judgement of said court be reversed and such directions be given that full force and efficacy may issue to the plaintiffs by reason of said pleas.

C. M. BOERMAN,
 Plaintiffs' Attorney.

And on the 21st. of September A. D. 1904, the court made the following order; to wit:

In the District Court of the United States for Porto Rico.

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ANTONIO J. AMADEO ET AL. }
 VS.
 NORTHERN ASSURANCE COMPANY. }

Upon motion of C. M. Boerman, attorney for plaintiff, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgement heretofore entered herein. This at San Juan, Porto Rico, this twenty-first day of September, A. D. 1904.

CHAS. F. McKENNA,
 Judge of District Court for Porto Rico.

Appeal Bond. Filed December 20th, 1904.

United States District Court for Porto Rico.

ANTONIO JOSÉ AMADEO and PASTOR MARQUEZ and Co. }
 VS.
 NORTHERN ASSURANCE Co. }

Know all men by these presents that we, the Pastor Marquez and Co. as principal and Lucas Amadeo of Barros and Felix Salazar of Ponce as sureties are held and firmly bound unto The Northern Assurance Company the defendant above named in the sum of five hundred dollars to be paid to the said company successors and assignees, to which payment well and truly to be made we bind ourselves and each of us jointly and severally and our successors and assigns firmly by these presents. Sealed with our seals and dated this 30th day of November, 1904.

Whereas the above named plaintiffs have sued out a writ of error to the Supreme Court of the United States to reverse the judgement in the above entitled cause by the United States district court for Porto Rico.

Now therefore the condition of this obligation is such that if the above named plaintiffs shall prosecute said writ to effect and answer all costs and damages if they shall fail to make good their plea then this obligation to be void, otherwise to remain in full force and virtue.

(Sig'd)

PASTOR MARQUEZ & COM., en Liquid.
 E. SALAZAR.
 LUCAS AMADEO.
 FELIPE SALAZAR.

21 Lucas Amadeo and Felipe Salazar each of them says under oath that he is worth two thousand five hundred — over and above his legal liabilities.

(Sig'd)

LUCAS AMADEO.
FELIPE SALAZAR.

Sworn to before me this 30th November 1904.

A. AGUAYO,
Deputy Clerk U. S. Court.

Lucas Amadeo and Felipe Salazar the persons who signed as sureties in the foregoing bond personally appeared before me the undersigned, and acknowledged the execution of the same. This 30th day of November, 1904.

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico,
By A. AGUAYO,
Deputy Clerk.

Petition and Order. Filed Dec. 30th, 1904.

In the District Court of the United States for Porto Rico.

ANTONIO JOSÉ AMADEO, for the Use of and Together with The Pastor Marquez Company, in Liquidation,	} No. 141.
VS.	
NORTHERN ASSURANCE COMPANY.	

Petition.

Chas. M. Boerman, attorney for the plaintiffs and appellants in the above entitled cause, shows to this honorable court that because of the great distance of Porto Rico from Washington, thirty days is too short for the preparation and transmission of the record in this case, and therefore moves and prays this court to grant sixty days additional within which the said transcript of record may be transmitted to the Supreme Court of the United States.

C. M. BOERMAN,
Attorney for Plaintiffs.

Order.

The court hereby orders, upon the foregoing petition, that the time for filing the transcript of record be and hereby is extended to ninety days from the date of the issuance of the writ of error.

(Signed)

CHAS. F. McKENNA,
Judge of the U. S. Dist. Court for Porto Rico.

22 In the District Court of the United States for Porto Rico.

I, H. H. Scoville, clerk of said court, do hereby certify, that the foregoing is a true and correct transcript of the record of the cause therein stated on file and of record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Ponce, this 28th day of February, 1905.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico,
By A. AGUAYO,
Deputy Clerk.

23 [Endorsed:] No. 141 In the district court of the United States for Porto Rico. Antonio José Amadeo vs. Northern Assurance Company Transcript of record.

24 In the District Court of the United States for Porto Rico.

ANTONIO JOSÉ AMADEO, for the Use of and Together with The Pastor Marquez Company, in Liquidation,	} No. 141.
vs.	
NORTHERN ASSURANCE COMPANY.	

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Northern Assurance Company and F. H. Dexter, Esq., its attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for Porto Rico, wherein Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 31st day of December, A. D. 1904, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,
Judge of the District Court of the
United States for Porto Rico.

Return on Service Writ.

UNITED STATES OF AMERICA, } ss:
 The District of Porto Rico, }

I hereby certify and return that I served the annexed citation on the therein-named Northern Assurance Company by handing to and leaving a true and correct copy thereof with F. H. Dexter, its attorney personally at San Juan in said district on the 5th day of January, A. D. 1905.

E. S. WILSON,
 U. S. Marshal.
 — — —, Deputy.

25½ [Endorsed:] No. 141. In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. Northern Assurance Company. Citation. Marshal's fees. 1 service, \$2.00 Expenses — D.

26 In the District Court of the United States for Porto Rico.

ANTONIO JOSÉ AMADEO, for the Use of and Together with
 The Pastor Marquez Company, in Liquidation,
 vs.
 NORTHERN ASSURANCE COMPANY. } No. 141.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Chas. F. McKenna, judge of the district court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court of the United States for Porto Rico, before you, between Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, and The Northern Assurance Company, defendant in error, a manifest error has happened to the great damage of the said Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation, plaintiffs in error, as by the complaint appears.

We, being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in

this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so as to have the same at the city of Washington, District of Columbia, on the 30th day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 31st day of December, in the year of our Lord one thousand nine hundred and four.

H. H. SCOVILLE,
Clerk of the U. S. Dist. Court for Porto Rico.

Allowed by

[Seal United States District Court for the District of Porto Rico.]

CHAS. F. McKENNA,
Judge of the District Court of the
United States for Porto Rico.

28 [Endorsed:] No. 141. In the district court of the United States for Porto Rico. Antonio José Amadeo for the use of and together with The Pastor Marquez Company in liquidation vs. The Northern Assurance Co. Writ of error.

Endorsed on cover: File No. 19,664. Porto Rico D. C. U. S. Term No. 199. Antonio Jose Amadeo, for the use of and together with The Pastor Marquez Company, in liquidation, plaintiffs in error, vs. The Northern Assurance Company. Filed March 15th, 1905. File No. 19,664.